

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

TERRY HARRIS, DOROTHY )  
WATFORD, ET AL., )  
Plaintiffs, )  
vs. ) CASE NO.: 2:05CV1083-MEF  
JOSEPH BORG, )  
Defendants. )

**MOTION TO STRIKE  
AND, IN THE ALTERNATIVE,  
MOTION REQUESTING THE OPPORTUNITY TO RESPOND  
TO PLAINTIFFS' SUBMISSION  
IN SUPPORT OF CLASS CERTIFICATION**

**COMES NOW** the Defendant and moves the Court to strike the Plaintiffs' submission in support of class certification as untimely and not in compliance with the Court's prior order. In the alternative, if the Court denies the Defendant's motion to strike, the Defendant asks that he be given the opportunity to show to the Court that Plaintiffs' submission is inadequate as a matter of law to support a class action, that there are no proper class claims and that Plaintiffs are wholly unqualified to act as class representatives for their putative class.

**I. The Plaintiffs' submission is untimely and not in compliance with the Court's order.**

On August 10, 2006 the Defendant filed a motion to dismiss the class action claims in Plaintiffs' complaint on the grounds that the time for class action discovery had expired and the plaintiffs had provided nothing to the Court to support those claims.

On August 11, 2006 the Court ordered that the Defendant's motion be submitted on September 8, 2006 and that the plaintiff should file their *brief and evidentiary materials* by September 1, 2006. The Defendant was instructed to respond by September 8, 2006.

On September 6, 2006, when the Plaintiffs had filed nothing in response to the Court's order by the time allowed, Defendant filed a notification to the Court of the Plaintiffs' non-responsiveness, asserting that Defendant had nothing on which to respond.

On September 22, 2006, twelve days after the motion was submitted to the Court, the Plaintiffs filed an Affidavit in Support of Class Certification. This submission is comprised of a few conclusory allegations and a list of names. No explanation or excuse was offered for the Plaintiffs' failure to comply with the Court's order and it was not accompanied by a brief.

WHEREFORE, the Defendant asks the Court to strike the Plaintiffs' submission as untimely and not in compliance with the Court order.

**2. The Plaintiffs' submission is inadequate as a matter of law.**

The Plaintiffs' untimely filing provides no basis for the certification of a class action. It amounts to no more than unsubstantiated conclusions and a list of names. If given the opportunity to respond, Defendant will show that the Plaintiffs' claims bear little or no relationship to the alleged claims of their purported class members and that the Plaintiffs are entirely inappropriate class representatives for the putative class. Defendant will show that Plaintiff Harris, apparently with plaintiff Watford's assistance, was the creator and operator of several companies, including Wealth Builders International, the company referred to in Plaintiffs' submission, that illegally pooled investors' funds in violation of Alabama securities laws. Defendant will show that Plaintiff Harris has plead guilty to violations of Alabama law in connection with the very investors he would now represent as their class representative.

WHEREFORE, the Defendant asks the Court to give him the opportunity to respond to Plaintiffs' submission unless the Court intends to strike the submission and/or grant the Defendant's motion to dismiss class claims.

s/Bruce J. Downey, III  
 BRUCE J. DOWNEY, III  
 ASB-9205-W86B  
 Attorney for Defendant  
 Joseph P. Borg, Esq. Alabama Securities  
 Commission

**OF COUNSEL:**

CAPELL & HOWARD, P.C.  
150 South Perry Street (36104)  
Post Office Box 2069  
Montgomery, Alabama 36102-2069  
Telephone: (334) 241-8000  
Facsimile: (334) 323-8888

Jane Brannan, Esq.  
Alabama Securities Commission  
770 Washington Ave., Ste. 570  
Montgomery, AL 36130-4700  
Telephone: (334) 353-4690

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 28<sup>th</sup> day of September, 2006, I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Henry L. Penick, Esq.  
H. L. Penick & Associates, P.C.  
P O Box 967  
Birmingham, AL 35201-0967

**s/Bruce J. Downey, III**

OF COUNSEL